Supreme Court, U.S.
FILED
FEB 25 2002
CLERK

(2)

No. 01-1086

IN THE

Supreme Court of the United States

QUINTEN X. JACKSON,
Petitioner,

v.

LAMONT A. MORGAN, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION OF WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals correctly applied this Court's decision in *Hudson v. McMillian*, 503 U.S. 1 (1992), in holding that Petitioner had not made out a claim of excessive use of force from his isolated confinement in restraints because Petitioner failed to establish more than *de minimis* injury.

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STATEMENT OF THE CASE

This case is not, as Petitioner Jackson maintains, a case of a malicious and sadistic attack by correctional officers upon an innocent, non-violent inmate that miraculously caused no injury. Instead, this is a case of a disruptive inmate who, after being forcefully removed from his cell with the use of pepper spray and decontaminated in the medical unit, was placed in an isolation cell for two days in three-piece mechanical restraints. Only the issue of Jackson's confinement in the isolation cell is before this Court. The issue of the use of pepper spray in removing Jackson from his cell was decided in favor of the officers by the jury in the lower court and Jackson dismissed his appeal on this issue in the Court of Appeals. The unpublished opinion which this Court is asked to review dealt solely with the alleged excessive use of force upon Jackson by prison guards in placing him in an isolation cell for two days in three-piece mechanical restraints immediately after Jackson was evaluated and decontaminated by medical staff.[1]

The Maryland Correctional Adjustment Center ("MCAC"), also known as Super Max, confines the most violent and disruptive inmates in the Maryland Division of Correction ("DOC"). In 1994, MCAC housed 188 inmates out of DOC's total inmate population in excess of 20,000 prisoners. Jackson was one of 48 inmates housed in the MCAC segregation unit. These individuals are considered special management inmates who have more limited privileges, and are subject to stricter operating procedures than, general population inmates.

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[1] This particular isolation cell was closed in 1995.

Respondents are the response team correctional officers sent to Jackson's cell by the shift commander who had decided to remove Jackson from his cell and to place him in the isolation cell for creating a disturbance. Lt. Locklear, the duty lieutenant in charge of all housing on that particular unit, was authorized to use pepper spray if necessary in carrying out this task. Because Jackson refused to comply with removal procedures and the orders of Lt. Locklear, video taping began and pepper spray was utilized. After twelve bursts of pepper spray at three different times, and after repeated orders to comply, Jackson finally complied with the removal procedures. Jackson testified that the pepper spray hit him in his face and groin prior to the removal and delivery of his clothing for inspection and prior to the opening of the cell. (App. 3a-4a.)

After removal from his cell, Jackson was taken to the medical department for treatment. The registered nurse on duty washed his head under running water and allowed him to wipe his groin with wet paper towels. Jackson was in three-piece restraints during this time but was still able to use the wet towels to wipe off the pepper spray. The response team then escorted Jackson to the isolation cell where he was provided clean underwear and left in the three-piece mechanical restraints. (App. 4a.) All this activity was video taped.

In 1995, Jackson filed an action pursuant to 42 U.S.C. § 1983 in the United States District Court for the District of Maryland, alleging that his Eighth Amendment right to be free from cruel and unusual punishment was violated when he was subjected to pepper spray on January 11,

1994 and placed in the isolation cell in three-piece mechanical restraints on that date and on two other occasions thereafter. Respondents were sued along with other correctional officers as well as the Assistant Warden, the Warden and the Commissioner of Corrections. After motions, including one that removed the higher supervisory prison officials from the case, the two claims relating to events on January 11, 1994 were submitted to the jury by the presiding magistrate judge. The jury found for the officers on the issue of the use of pepper spray and found for Jackson on the issue of confinement in the isolation cell. The jury awarded Jackson One Dollar ($1.00) in compensatory damages and a total of Nine Thousand Five Hundred Dollars ($9,500.00) in punitive damages. (App. 38a-39a.) The magistrate judge denied the officers' motion for judgment as a matter of law in a post trial order. (App. 48a-49a.)

The officers appealed, arguing that the District Court erred in denying their motion for judgment as a matter of law because Jackson failed to establish the objective and subjective requirements of an excessive force claim. In an unpublished 2-1 decision, the Court of Appeals agreed and reversed the jury's verdict. (App. 5a.) Following the dictates of this Court, most particularly *Hudson v. McMillian*, 503 U.S. 1 (1992); *Wilson v. Seiter*, 501 U.S. 294 (1991); and *Whitley v. Albers*, 475 U.S. 312 (1986), the majority focused on the objective element of the excessive force claim, which requires more than a *de minimis* use of force, noting that this Court has proscribed recovery based on *de minimis* force, unless that use of force is "repugnant to the conscience of mankind." (App. 6a) (quoting *Hudson*, 503 U.S. at 9-10.) The court

found that there was insufficient evidence for a reasonable jury to conclude that Jackson had been subjected to such force or that Jackson had suffered more than *de minimis* injury. Whereas the District Court relied on Jackson's testimony about the pain and disability caused by the pepper spray, the Court of Appeals looked to the video tape and the medical record, which showed little, if any, injury arising from the pepper spray or the restraints. In commenting on the video tape, the majority observed that:

> two minutes after exiting his cell - at 2:05 p.m. on the video tape - Jackson was shouting in Officer Fenton's face, calling him a devil and "speaking in tongues." By 2:10 p.m. on the video tape, Jackson had washed his face and head eight times; the nurse had cleaned his head three times; and he exhibited no effects of the pepper spray. In fact, Jackson limited his decontamination and can be heard on the video tape telling the nurse, "that's alright." Jackson was then provided wet paper towels with which to wash his groin and he cleaned his groin several times.

(App. 7a.) The video tape showed Jackson's complete recovery from the effects of the pepper spray. (App. 10a.) In addition, the medical record showed that Jackson had no complaints on January 11, 1994. It was not until January 27th, more than two weeks after his removal from the isolation cell, that Jackson made complaints of any kind. Even then, none of his complaints referenced the January 11-13 incident. (App. 10a.)

As to the three-piece restraints, the majority observed

from viewing the video tape that the restraints would not have prevented Jackson from eating or urinating in the isolation cell. The video tape showed Jackson in the medical area using his hands to wipe his face and groin while wearing restraints like those in which he was placed in the isolation cell. The record of isolation confinement shows all meals were offered to Jackson and Jackson refused breakfast and lunch on January 12, 1994.[2] Jackson's testimony did not dispute this. The record of isolation confinement also reveals that, while he was in the isolation cell, Jackson made no complaints similar to his later allegations even though he knew how to make complaints and had done so before. (App. 11a.)

The majority also found that no reasonable jury could find the force used in this case was "repugnant to the conscience of mankind." (App. 8a.) The court dismissed as "gratuitous" (*id.*) the jury's statement which characterized the "conditions" existing in the isolation cell "as repugnant to the conscience of mankind." (App. 37a.) While the jury may have thought that the officers bore some responsibility for the conditions to which they objected, the major responsibility was laid on prison officials. *(id.)* More importantly, the jury's statement regarding the isolation cell makes no mention of force, restraints, pepper spray, the officers' conduct or Jackson's particular experience, including his alleged injury. (*id.*)

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[2] The record of isolation confinement is a document that monitors an inmate's activity in the isolation cell at least half-hourly.

Judge Diana Gribbon Motz dissented on the basis of the opinion she wrote in *Williams v. Benjamin*, 77 F.3d 756 (4th Cir. 1996), which involved an excessive force claim where an inmate was confined for eight hours in four-point restraints after exposure to tear gas, without any medical attention. *Williams* dealt exclusively with the subjective element of the inmate's excessive force claim, the objective element having been conceded. Judge Motz wrote that the present case was governed by *Williams*, and that under *Williams*, Jackson's protestations of pain established greater injury beyond the *de minimus* level. (App. 20a-24a.)

Because the Court of Appeals reversed the District Court's ruling on the officers' motion for judgment, the court did not reach the questions presented on the subjective element of an excessive force claim, qualified immunity, and punitive damages. (App. 12a.) Jackson subsequently filed a Petition for Rehearing and Rehearing En Banc that was denied.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS' DECISION IS CONSISTENT WITH *HUDSON V. MCMILLIAN*.

Further review of this case is unwarranted because the Court of Appeals' decision rests on a factually-based determination that conforms with prior decisions of this Court. In *Hudson v. McMillian*, 503 U.S. 1 (1992), the Court clarified the standard for determining whether prison officials have violated the Eighth Amendment by using excessive force. The Court stated that the "[c]ore

judicial inquiry is . . . whether force is applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* at 7. To succeed on an Eighth Amendment claim for cruel and unusual punishment, a prisoner must prove: (1) objectively that the deprivation of a basic human need was sufficiently serious, and (2) that the prison officials acted subjectively with a "sufficiently culpable state of mind." *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). By looking for evidence of more than *de minimis* injury as an indicator of excessive force, the Court of Appeals correctly applied the objective portion of this test in reversing the judgment below.

In discussing the objective component of an Eighth Amendment claim, *Hudson* distinguished among different types of claims. Extreme deprivations resulting in serious harm, or risk of it, are required to make out a conditions of confinement claim, and serious medical needs are required to make out a medical deliberate indifference claim. 503 U.S. at 8-9. In the excessive force context, however, the Court has rejected a parallel significant injury requirement. Nonetheless, in continuing to discuss the objective element of the excessive force claim, the Court cautioned that "the Eighth Amendment's prohibition of cruel and unusual punishment, necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort or repugnant to the conscience of mankind." *Id.* at 9-10 [3] (internal quotation

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[3] In *Hudson*, blows that caused bruises, swelling, loosened teeth and cracked dental plate were held not *de*

(continued...)

marks omitted).

Thus, the extent of the injury is highly relevant to the objective component of an excessive force claim. While significant or serious injury is not required, something more than *de minimis* injury must be shown.

The Court of Appeals did nothing exceptional in applying these principles and determining that Jackson had not shown more than a *de minimis* use of force. The video tape showed that Jackson exhibited no ill-effects from the pepper spray by the time he departed the medical unit. (App. 10a.) Similarly, uncontradicted expert testimony established that the effects of pepper spray lasted no more than one hour and that it had no known permanent effects. (*Id.*) Jackson was thus suffering from no injury at the time of his placement in the isolation cell, and he suffered no injury thereafter during his two day confinement. Although he later claimed that the three-piece restraints were placed on him too tightly, causing injury, the court correctly concluded that his actions and the lack of medical evidence are to the contrary, as he never complained of any injury while in the isolation cell and never sought medical treatment for the allegedly adverse effects of tight restraints thereafter. (App. 11a.) When he did seek medical attention two weeks later, it had no connection with the January 11-13, 1994 incident. (App. 10a.)

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[3](...continued)
minimis for Eighth Amendment purposes.

The Fourth Circuit also committed no error worthy of review in determining that no reasonable jury could find the force used in this case was "repugnant to the conscience of mankind." (App. 8a.) Most of the discussion on this issue centered around the jury's statement regarding the isolation cell. The Court of Appeals characterized the statement as gratuitous and stated that it did not constitute evidence, as the magistrate judge in the lower court determined it did, that the officers' conduct was "repugnant to mankind." (App. 7a.) Indeed, the statement does not address the officers' conduct regarding pepper spray, restraints or force, but instead comments on the conditions in the isolation cell. The conduct of these officers cannot be described as repugnant. On the contrary, on orders of the shift commander, Lt. Locklear and his officers merely removed the recalcitrant Jackson from his cell and placed him in the isolation cell in restraints. That procedure served legitimate penalogical objectives.

The Court of Appeals decided no novel or unsettled questions of federal law but rather applied well-established legal principles in concluding that respondents did not violate Jackson's Eighth Amendment rights. That conclusion does not justify the exercise of this Court's discretionary jurisdiction.

II. THE STANDARD THAT THE COURT OF APPEALS APPLIED IN THIS CASE DOES NOT CONFLICT WITH OTHER CIRCUIT COURT DECISIONS.

Jackson's assertion that the Court of Appeals' decision conflicts with decisions of other circuits is based on the incorrect premise that the appellate court in this case applied a standard that requires "an inmate to plead and prove a discrete threshold level of injury in order to prevail on an Eighth Amendment excessive force claim irrespective of whether a correction officer maliciously intended to harm an inmate." Pet. at 10. A plain reading of the decision below shows that, as do the other appellate court decisions that Jackson claims "consider the extent of an inmate's injury as but one of several factors in the excessive force determination," *id.*, that is precisely what the court did here. The Court of Appeals stated explicitly that "de minimus injury defeats a plaintiff's excessive force claim 'absent the most extraordinary circumstances,' i.e., unless the force used was 'repugnant to the conscience of mankind.'" (App. 6a-7a) (quoting *Norman v. Taylor*, 25 F.3d 1259, 1263 (4th Cir.1994)). This standard does not conflict with the standard applied in other circuits because, as in the decisions that Jackson cites, the language recited by the court in this case makes clear that the extent of an inmate's injury is not dispositive of an Eighth Amendment claim and does not establish, as Jackson asserts, any "conclusive presumption" with respect to whether the Eighth Amendment has been violated. Pet. at 16.

Indeed, all circuits agree, following *Hudson*, that in focusing on the objective element of an excessive force claim, more than a *de minimis* use of force is required but that significant injury is not necessary. The facts of each case, rather than the legal standard that is applied, are what account for any purported "conflict" in the way the circuit courts treat *de minimis* injury as an indicator of *de minimis* use of force. Regardless of how they treat those facts, however, the circuits are arriving at the same result that *Hudson* mandates.

The fact-dependent nature of the Eighth Amendment claim at issue here underscores the absence of any need for further review, particularly because none of the cases cited by Jackson involves situations remotely similar to the facts in this case. None involve the use of or exposure to pepper spray, only a handful involve restraints, and most address an inmate's claim, which has not been made here, of being physically struck by a correctional officer.

For example, in *Davidson v. Flynn*, 32 F.3d 27 (2nd Cir. 1994), the court held that the use of force, resulting in permanent scarring and numbness, was more than *de minimis* when handcuffs were deliberately applied too tightly on an inmate in retaliation for his litigiousness. He was placed in leg irons and waist chains that cut into his flesh, reduced circulation and caused swelling, and prison officials denied the inmate medical attention. Similarly, in *Gibeau v. Nellis*, 18 F.3d 107 (2nd Cir. 1994), the court affirmed a jury verdict that excessive force was used when an officer struck the inmate three times in the head with a penlight while the inmate was handcuffed and restrained after an altercation.

Other cases that Jackson relies upon are likewise inapposite. In *Campbell v. Sikes*, 169 F.3d 1353 (11th Cir. 1999), the court rejected a mental patient's excessive force challenge to the use of an L-shaped restraint system that was deemed necessary by the defendant hospital officials because she was suicidal and had previously escaped from every other form of restraint. In finding no evidence that the use of restraints was malicious or sadistic, the court stated that the use of the restraints undisputedly caused the patient no physical injury, although it resulted in physical discomfort and emotional pain. *Id.* at 1376. In *Brooks v. Kyler*, 204 F.3d 102 (3rd Cir. 2000), which is the principal case that Jackson cites for the proposition that there exists a conflict, the court declared that it did not need to resolve whether *de minimis* force would support a constitutional claim because the inmate's injuries rose far above the *de minimis* level when he was handcuffed to a waist restraint belt, repeatedly struck on the right side of his head with an officer's fist, punched and stomped on his back and neck after falling face down, in and out of consciousness for several minutes, and subsequently slammed into a cell wall while in three-piece restraints. As a result of the alleged attack, the inmate suffered injuries including abrasions on his neck and hands for which he received pain medications. *Id.* at 104.

The stark doctrinal conflict posited by Jackson simply does not exist because facts like these are typical of the cases that Jackson cites, and these facts are what drive the results that are reached, not the legal standard employed. This case presents no issue on which the lower federal courts require this Court's guidance because Jackson has failed to identify any factually-apposite decision that

supports his conflict assertion.

The facts at issue here make this case an especially poor vehicle in which to address the question that Jackson raises because this case is, at best, a hybrid between a "conditions" case and an excessive force claim. The so-called "attack" upon Jackson, which he characterizes as malicious and sadistic, was his placement in an isolation cell in three-piece restraints. But according to the jury statement that Jackson relies upon so heavily, the "conditions existing at the Maryland Correctional Adjustment Center" were what violated the Eighth Amendment, not the "battery inflicted by Cpl. Fenton upon Quinten Jackson" which the jury found did not "rise[] to a level that deprived Mr. Jackson of his constitutional rights." (App. 37a.) As a conditions case, however, the objective component of the Eighth Amendment analysis set out in *Wilson v. Seiter*, 501 U.S. 294 (1991), would have required significant injury.

While Jackson could not prove such an injury and so instead tried this as an excessive force case, that merely underscores how this case does not lend itself to a detailed analysis of the role of *de minimis* injury in resolution of excessive force cases under the Eighth Amendment. Even if there existed a conflict among the circuits, and there does not, it should be resolved in a case in which the use of force rather than conditions of confinement is at issue. Further review of this case is simply unwarranted.

CONCLUSION

For the reasons stated, the petition should be denied.

Respectfully submitted,

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